IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

WEDNESDAY, THE 14TH NOVEMBER 2007 / 23RD KARTHIKA 1929

WP(C).No. 29006 of 2007(C)

PETITIONER:

K.R.SYAM KUMAR,
PROPRIETOR K.R.S MARKETING CHANGANACHERRY,
RESIDING AT SYAM SADAN PERUMPANACHY P.O.,
CHANGANACHERRY.

BY ADV. SRI.VISHNURAJ SUGATHAN

RESPONDENTS:
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1. **STATE OF KERALA, REPRESENTED BY ITS PRINCIPAL SECRETARY, HOME DEPARTMENT, SECRETARIAT, TRIVANDRUM.**

2. **MATHEW, SECRETARY, LOADING AND UNLOADING WORKERS UNION, (C.I.T.U), THENGANA UNIT, RESIDING AT THOOMPUNKAL HOUSE, PERUMPANACHY P.O., CHANGANASSERY.**

3. **THE CIRCLE INSPECTOR OF POLICE, CHANGANACHERRY.**

4. **THE SUPERINTENDENT OF POLICE, KOTTAYAM.**

BY ADV. SRI.SURIN GEORGE IPE for R2
BY GOVERNMENT PLEADER SRI. SALIM.P.A for R1

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 14/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.29006/2007 C

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE LICENSE DTD. 24/09/2007 ISSUED TO THE PETITIONER BY MADAPPALLY GRAMA PANCHAYAT.**

EXT.P2; **COPY OF THE CERTIFICATE OF REGISTRATION DTD. 30/06/2007 ISSUED TO THE PETITIONER BY THE COMMERCIAL TAX OFFICER CHANGANACHERRY.**

EXT.P3: **COPY OF THE COMPLAINT DTD. 20/09/2007 GIVEN BY THE PETITIONER TO THE CIRCLE INSPECTOR OF POLICE, CHANGANACHERRY.**

EXT.P4: **COPY OF THE COMPLAINT DTD. 20/09/2007 GIVEN BY THE PETITIONER TO THE SUPERINTENDENT OF POLICE, KOTTAYAM.**

/TRUE COPY/

P.S.TO JUDGE

KSS

K.BALAKRISHNAN NAIR &

K.P.BALACHANDRAN, JJ.

W.P.(C) NO.29006 OF 2007-C

Dated 14th November, 2007.

JUDGMENT

Balakrishnan Nair, J.

The petitioner is running a shop, dealing in Aluminium composite materials, panel, reflective glass, mirrors etc. He claims, he has engaged permanent workmen, specialised in handling those delicate materials. While so, on 18.9.2007 the 2nd respondent and his supporters came to the unit and prevented unloading of the materials brought to his shop. When the petitioner explained to such persons his inability to engage them for doing the work, they claimed that they may be paid the wages and he may get the work done through the workmen of his choice. Feeling aggrieved by the said stand of the 2nd respondent and his supporters, the petitioner preferred Exts.P3 and P4 representations before the police officers and thereafter, this writ petition is filed, seeking the following reliefs:

> "(i) issue a writ of mandamus or any other appropriate writ or direction, commanding the 3rd and 4th respondents to provide adequate protection to the life and property of the petitioner

while loading and unloading the materials at the petitioner's business premises,

(ii) to direct the second respondent to keep himself and his men away from obstructing the loading and unloading of materials at the petitioner's business premises."

2. The 2nd respondent has filed a counter affidavit, stating that the petitioner started his business only recently. The allegations of obstruction etc., are denied by him. The members of the union represented by the 2nd respondent are the head load workers of the area and therefore, they claimed the work in the newly started unit of the petitioner. The allegations made in Exts.P3 and P4 complaints are unfounded, it is submitted.

3. We heard the learned counsel on both sides. This being an area not covered by the scheme under the Kerala Head load Workers' Act, normally, freedom should be conceded to the employer to engage his own workmen to do the loading and unloading work in his establishment. But, the learned counsel for the 2nd respondent submits that the petitioner does not have any registered workmen to do the work. He has not disclosed their names in the writ petition. In the absence of regular registered workmen, the head load workers of the area are justified in claiming the work, it is submitted.

4. We feel that this dispute should be resolved by the forums

provided under the Head load Workers' Act. We decline to express anything on the rival contentions of the parties. Till favourable orders are obtained by the 2nd respondent from the statutory forum, we feel that the petitioner should be allowed to do the work, engaging his own workmen. But, this direction will be subject to any orders that may be passed by the statutory authorities.

The Writ Petition is disposed of as above.

K.BALAKRISHNAN NAIR, JUDGE.

K.P.BALACHANDRAN, JUDGE.

Nm/